In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-108

JOSEPH STASSI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the government failed to disclose evidence favorable to petitioner, and concealed the fact that the chief government witness committed perjury.

After a jury trial in the United States District Court for the Southern District of Texas petitioner was convicted of conspiracy to smuggle heroin into the United States, and to conceal and facilitate its transportation, in violation of 21 U.S.C. (1964 ed.) 174. After the jury verdict of guilty, the trial judge granted a new trial because certain contacts had been permitted with the sequestered jury. At the second trial petitioner was again convicted. He was sentenced to a term of imprisonment for eighteen years.

The court of appeals remanded the case to the district court for the limited purpose of determining whether petitioner's conviction was an outgrowth of electronic surveillance which he might have the standing to question. *Stassi* v. *United States,* 410 F. 2d 946 (C.A. 5). After a hearing on this issue, it was determined that petitioner's conviction was not an outgrowth of any illegal electronic surveillance. The court of appeals affirmed, *United States* v. *Stassi,* 431 F. 2d 353 (C.A. 5).

Petitioner then brought a proceeding pursuant to 28 U.S.C. 2255. The United States District Court for the Southern District of Texas denied his motion in a lengthy opinion (Pet. App. A). The court of appeals affirmed without opinion, 475 F. 2d 1403 (C.A. 5).

1. The facts in this case, which provide the background for the Section 2255 motion and the instant petition, are set forth in the opinion of the district court (Pet. App. A, pp. 21-27). Briefly, petitioner was indicted in 1963, along with eight other co-defendants, for conspiracy to smuggle heroin into the United States. Petitioner immediately became a fugitive. "He remained in this status, using fictitious names, false identification, wearing a new mustache, and moving frequently from one address to another until his arrest in Florida [on] January 25, 1966" (Pet. App. A, p. 24).

The principal witness at trial against petitioner Stassi was one Milton Abramson, an accomplice, who had pleaded guilty, and was sentenced some three years prior to petitioner's arrest to a total of 16 years' imprisonment. Abramson had also testified against petitioner before the grand jury. At the trial, as summarized in the district court opinion (Pet. App. A, p. 25):

> Abramson testified at length as to his association with Stassi, who was the money man in the entire

enterprise. He testified to various pickups which he (Abramson) had made of quantities of narcotics (usually in the range of 20 pounds), at Stassi's direction, and of his subsequent delivery to Granza and Ferrara. He testified to a number of trips to Mexico City, sometimes with Stassi, when arrangements were made for the purchase from "the French Connection", Mondoloni and Chauvet (who have never been arrested). (Stassi II, pp. 228-457.) Again his testimony was corroborated in meticulous detail by documentary evidence such as hotel registrations, airplane tickets, telephone toll charges, etc. (e.g. Stassi II, pp. 952-970, 975-989, 999-1022.)

The cross-examination of Abramson by petitioner's trial counsel, Percy Foreman, was "extensive and exhaustive" (Pet. App. A, p. 26). As the district court found (Pet. App. A, pp. 26-27):

> * * * It consumes some 50 pages of the record (Stassi II, pp. 458-953). Mr. Foreman was armed at that time (1) with Jencks Act statements furnished by the government (Stassi II, pp. 665-671); (2) with Abramson's testimony before the grand juries, furnished by the government (Stassi II, pp. 651-654, 673); (3) with Abramson's testimony in the Granza and Ferrara trial (Stassi II, pp. 695-696); and (4) with the transcript of the first Stassi trial in Corpus Christi (Stassi II, pp. 656-657, 850-853). He was aware at that time, and cross-examined Abramson extensively about, his agreement to testify in return for the promises made by the government, set out above (see e.g. 825-856, 482-515 and Opening Statement by Mr. Foreman, pp. 184-187 of Stassi II).

2. Petitioner alleges here (1) that the government "willfully concealed pertinent information and facts concerning petitioner's case" (Pet. p. 7) and (2) that the "simple facts reveal that at both Stassi trials (the Records of which are now part of this hearing) Milton Abramson denied any deal, trade or promise of leniency, and the Assistant United States Attorneys prosecuting the case sat silent and permitted such lies to go to the jury" (Pet. p. 14). These claims are without merit. The detailed opinion and findings of fact made by the district court (Pet. App. A) after a hearing, which are completely ignored by petitioner, show (1) that there is no basis whatever for the claim that any "pertinent information" was concealed and (2) that contrary to petitioner's claim, made without any reference to the record, Abramson was not permitted to testify falsely that no "deal, trade or promise of leniency" had been made. The testimony at petitioner's trial revealed that Abramson had been promised "that if he cooperated fully" the United States Attorney's office "would assist him at a later date in a request he might make for executive clemency" (Pet. App. A, p. 23). As the district court found, without contradiction from petitioner's trial counsel, the latter was "aware" of the promises made to Abramson and examined him "extensively about his agreement to testify in return for the promises made by the government" (Pet. App. A, p. 26).

We rely upon the exhaustive opinion of the district court in urging that the petition for a writ of certiorari be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

AUGUST 1973.